

## **ADMINISTRATIVE PANEL DECISION**

**Raizen S.A. v. Contact Privacy Inc. Customer 12411875385 / Raizen Energia and Contact Privacy Inc. Customer 12410336444 / Carlos Vanea  
Case No. D2022-0752**

### **1. The Parties**

The Complainant is Raizen S.A., Brazil, represented by Opice Blum, Brazil.

The Respondent is Contact Privacy Inc. Customer 12411875385, Canada / Raizen Energia, Cameroon and Contact Privacy Inc. Customer 12410336444, Canada / Carlos Vanea, Cameroon.

### **2. The Domain Names and Registrar**

The Disputed Domain Names <raizenglobal.com> and <raizens-br.com> are registered with Google LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 2, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On March 3, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 11, 2022.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 13, 2022.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on April 21, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

According to the Complainant's undisputed allegations, it is a Brazilian company incorporated in 2010, active in the field of fuel and sugarcane production and commercialization, including its derivative products, such as sugar itself.

According to the undisputed information provided by the Complainant, the Disputed Domain Names were respectively registered on June 2, 2021 (<raizens-br.com>) and on January 5, 2022 (<raizenglobal.com>).

The Complaint is based, amongst others, on Brazilian verbal trademark registration RAIZEN No. 830684484, registered on May 20, 2014, for services in class 45.

It further results from the undisputed evidence provided by the Complainant that both Disputed Domain Names have been used at least 18 times to send scam emails by using the following email-addresses "[...@raizens-br.com", "[...@raizenglobal.com]" and "[...@raizenglobal.com]". These emails have been sent to the Complainant's customers pretending to be the Complainant. There are at least two of those emails with identical texts, offering "premium quality Brown and White Sugar" and submitting concrete purchasing offers (including prices) for different types of sugar. All emails have been signed by using the Complainant's original corporate name and address and using Brazilian telephone and fax numbers. The Complainant was made aware of this illegal practice through the complaints of several clients so that those attempted frauds failed.

#### 5. Parties' Contentions

##### A. Complainant

First, the Complainant requests the Panel to consolidate both Disputed Domain Names in the present proceedings. In its view, both Disputed Domain Names appear to be the subject of common control because in its view (i) both include the same naming pattern, *i.e.* the trademark RAIZEN followed by a geographic indicator "br" for "Brazil" and "global"; (ii) the registrants for both Domain Names are allegedly located in the same country and city (Douala in Cameroon) and the streets indicated are only a few kilometers away from each other; (iii) both Domain Names are used for the same fraudulent conduct, *i.e.* sending fraudulent emails pretending to be the Complainant and offering the sale of different types of sugar. Finally, the relevant facts and arguments of the Complaint are basically the same for both Domain Names so that the Respondent will face no hardship to answer the Complaint, as all arguments and facts apply equally to them. Therefore, the Complainant concludes that consolidation would be fair and equitable to all parties, and procedural efficiency speaks in favor of such consolidation.

Secondly, the Complainant contends that the textual and phonetic similarity between the Disputed Domain Names and the Complainant's trademarks is evident, since the term RAIZEN is completely reproduced therein. The only differences lie in the further non-distinctive elements "-br" as reference to the Brazilian domain protocol and "global" for a domain name of international business.

Thirdly, the Complainant contends that the Respondent lacks any rights or legitimate interests in the Disputed Domain Names. In particular, the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or corporate name to register a domain name(s). Furthermore, the Respondent has not used or prepared to use the Disputed Domain Names in connection with a *bona fide* offering of goods or services. In fact, using the Disputed Domain Names to engage in fraud by

impersonating the Complainant and sending phishing emails does not constitute a legitimate noncommercial or fair use of the Disputed Domain Names.

Thirdly, the Respondent's registration and use of the Disputed Domain Names constitutes – in the Complainant's view – bad faith. In fact, the Domain Names are used to prosecute an illicit and fraudulent activity, which proves the Respondent's bad faith, attempting to confuse Internet users and, mainly, the Complainant's consumers, in order to commit fraud.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the Disputed Domain Names should be transferred or cancelled:

(i) the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and

(iii) the Disputed Domain Name have been registered and are being used in bad faith.

## **A. Procedural issues / Consolidation**

Paragraph 10(e) of the Rules empowers a Panel to consolidate multiple domain name disputes in accordance with the Policy and Rules. A consolidated complaint may be accepted where the criteria described below are *prima facie* met. Furthermore, it is up to the Panel to issue a final determination on consolidation, which may apply its discretion in certain circumstances to order the separation of a filed complaint. In all cases, the burden falls to the party seeking consolidation to provide evidence in support of its request (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, “[WIPO Overview 3.0](#)”, at section 4.11).

Furthermore, where a complaint is filed against multiple respondents, as in the case at hand, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario ([WIPO Overview 3.0](#), at section 4.11.2).

In the case at hand, the Panel notes that the Disputed Domain Names are registered in the name of different registrants. However, this Panel has no doubt that both Disputed Domain Names are subject to common control due to the following reasons: (i) both Disputed Domain Names are used for a pattern of identical Respondent behavior, *i.e.* sending fraudulent emails (with identical wording) pretending to be the Complainant and offering the sale of different types of sugar; (ii) both Disputed Domain Names follow a similar naming pattern, *i.e.* the trademark RAIZEN (in one case followed by an “s”) combined with geographic terms, namely “br” for “Brazil” and “global” meaning “worldwide”; and (iii) similarities in the registrants' contact information since the registrants for both Disputed Domain Names are indicated as being located in the same country (Cameroon) and city (Douala) and – undisputedly – in two streets which are only a few kilometers away from each other.

Finally, the Panel joins the Complainant's view that the relevant facts and arguments are basically the same for both Disputed Domain Names and apply equally to them.

In the light of the above, the Panel does see any reasons why a consolidation should not be fair and equitable. Moreover, the Respondent had the possibility to object the consolidation but preferred not participating in this proceeding.

For reasons of procedural efficiency, fairness and equity the Panel therefore orders the proceedings for both Disputed Domain Names do be consolidated and will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

## **B. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the Disputed Domain Names are identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademark registrations in Brazil consisting of the term RAIZEN. Reference is made, in particular, to Brazilian verbal trademark registration RAIZEN no 830684484, registered on May 20, 2014, for services in class 45.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark for purposes of the first element, where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (*cf.* [WIPO Overview 3.0](#) at section 1.8). This Panel shares the same view and notes that both Disputed Domain Names contain the Complainant's registered trademark RAIZEN in full and is recognizable within both the Disputed Domain Names.

Finally, the generic Top-Level-Domain ("gTLD") ".com" of the Disputed Domain Names may be disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the Disputed Domain Names are confusingly similar to a trademark in which the Complainant has rights.

## **C. Rights or Legitimate Interests**

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the Disputed Domain Names. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the Disputed Domain Names.

According to the Complainant's uncontested evidence the Disputed Domain Names have been used several times for scam activities targeting the Complainant's customers with the following email-addresses "[...][@raizens-br.com](#)", "[...][@raizenglobal.com](#)" and "[...][@raizenglobal.com](#)" and pretending to be the Complainant. There are emails sent from addresses under each of the Disputed Domain Names with identical wording, offering "premium quality Brown and White Sugar" and submitting concrete purchasing offers (including prices) for different types of sugar. All emails have been signed by using the Complainant's original corporate name and address and using Brazilian telephone and fax numbers. UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#) at section 2.13.1).

Moreover, the Panel holds that such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use capitalizes on the reputation and goodwill of the Complainant's trademarks and is likely to mislead Internet users (see, e.g., *TELUS Corporation v. Fortefusion Fortefusion, Wordcounts*, WIPO Case No. [D2021-0787](#)).

In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the Disputed Domain Names. As outlined above, the Complainant's uncontested allegations demonstrate that it has not authorized the Respondent's use of the RAIZEN-trademark for registering the Disputed Domain Names, which are confusingly similar therewith.

Furthermore, the Panel notes that there is no evidence in the record showing that the Respondent might be commonly known by the Disputed Domain Names in the sense of paragraph 4(c)(ii) of the Policy.

Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the Disputed Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Disputed Domain Names are being used for fraudulent commercial emails, which excludes any noncommercial and fair use of the Disputed Domain Names from the outset.

It is acknowledged that once the Panel finds a *prima facie* case has been established, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Names.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

#### **D. Registered and Used in Bad Faith**

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the Disputed Domain Names have been registered and are being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

It is the view of this Panel that the Respondent has indeed registered the Disputed Domain Names and is using them in bad faith.

As explained above, it results from the Complainant's documented allegations that the Disputed Domain Names have been used to send scam emails to the Complainant's customers pretending to be the Complainant. The Panel has been presented at least one email sent from an address under each of the Disputed Domain Names with identical wording, offering "premium quality Brown and White Sugar" and submitting concrete purchasing offers (including prices) for different types of sugar. All emails have been signed by using the Complainant's original corporate name and address and using Brazilian telephone and fax numbers.

The Panel shares the approach taken by previous UDRP panels finding that use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. Many such cases involve a respondent's use of a domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by a complainant's actual or prospective customers (see [WIPO Overview 3.0](#) at section 3.4). In the case at hand, said use for a fraudulent email scam (allegedly) in the name of the Complainant demonstrates that the Respondent not only knew of the Complainant, its business, and marks, but also attempted to pass itself off as the Complainant for fraudulent purposes. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's

trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the Disputed Domain Names included the Complainant's trademark RAIZEN identically when the Disputed Domain Names were registered. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see, e.g., *Alstom v. Victor Marin*, WIPO Case No. [D2021-4037](#); *TELUS Corporation v. Fortefusion Fortefusion, Wordcounts*, WIPO Case No. [D2021-0787](#); *Charlotte Tilbury TM Limited v. Domains By Proxy, LLC / Qiangdong Liu, 365rw.com.ltd*, WIPO Case No. [D2020-0408](#)).

The finding of bad faith registration and use is supported by the following further circumstances resulting from the case file:

- (i) the Respondent's failure to submit a response;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good faith use;
- (iii) the implausibility of any good faith use to which the Disputed Domain Names may be put; and
- (iv) the Respondent hiding its identity behind a privacy shield.

In the light of the above the Panel finds that the Disputed Domain Names have been registered and are being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Names <raizenglobal.com> and <raizens-br.com> be transferred to the Complainant

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: May 5, 2022